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14 the powers granted to an association by Section 383 of the Code of Civil Procedure and the  
15 powers granted to the association in this title.

16 (d) Meetings of the membership of the association shall be conducted in accordance  
17 with a recognized system of parliamentary procedure or any parliamentary procedures the  
18 association may adopt.

19 (e) Notwithstanding any other provision of law, notice of meetings of the members  
20 shall specify those matters the board intends to present for action by the members, but,  
21 except as otherwise provided by law, any proper matter may be presented at the meeting for  
22 action.

23 (f) Members, or their designated representatives, shall have the right to inspect and  
24 photocopy:

25 (1) the financial records of the association, and

26 (2) contracts, leases and agreements between the association and any party.

27 The board of directors may withhold information in the personnel <sup>file</sup> of bona fide  
28 employees of the association, but salary, earnings, position description and contracted  
29 bonuses are to be disclosed. The board of directors may withhold from members specific  
30 offers, written contract negotiations, and negotiations or pending settlements of legal  
31 disputes. In addition, Mmembers of the association shall have access to association records  
32 in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of  
33 Division 2 of Title 1 of the Corporations Code.

34 (g) If an association adopts or has adopted a policy imposing any monetary penalty,  
35 including any fee, on any association member for a violation of the governing documents or  
36 rules of the association, including any monetary penalty relating to the activities of a guest or  
37 invitee of a member, the board of directors shall adopt and distribute to each member, by  
38 personal delivery or first-class mail, a schedule of the monetary penalties that may be  
39 assessed for those violations, which shall be in accordance with authorization for member  
40 discipline contained in the governing documents. The board of directors shall not be required  
41 to distribute any additional schedules of monetary penalties unless there are changes from  
42 the schedule that was adopted and distributed to the members pursuant to this subdivision.

43 (h) When the board of directors is to meet to consider or impose discipline upon a  
44 member, the board shall notify the member in writing, by either personal delivery or first-  
45 class mail, at least 10 days prior to the meeting. The notification shall contain, at a  
46 minimum, the date, time, and place of the meeting, the nature of the alleged violation for  
47 which a member may be disciplined, and a statement that the member has a right to attend  
48 and may address the board at the meeting. The board of directors of the association shall  
49 meet in executive session if requested by the member being disciplined.

50 If the board imposes discipline on a member, the board shall provide the member a  
51 written notification of the disciplinary action, by either personal delivery or first-class mail,  
52 within 15 days following the action. A disciplinary action shall not be effective against a  
53 member unless the board fulfills the requirements of this subdivision.

54 (i) Whenever two or more associations have consolidated any of their functions  
55 under a joint neighborhood association or similar organization, members of each  
56 participating association shall be entitled to attend all meetings of the joint association other  
57 than executive sessions, (1) shall be given reasonable opportunity for participation in those

## RESOLUTION 9-01-2002

### DIGEST

#### Homeowner Association: Member's Right to Inspect Records

Amends Civil Code section 1363 to permit homeowner association members to inspect association financial records and agreements to which the association is a party.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE (WITH RECOMMENDED AMENDMENT)

#### Reasons:

This resolution amends Civil Code section 1363 to permit homeowner association members to inspect association financial records and agreements to which the association is a party. This resolution should be approved in principle because it promotes knowledge and involvement by all association members.

A homeowner association benefits from active, informed members. Allowing the members access to financial records and agreements to which the association is a party will serve to keep members informed and involved. At the same time, the resolution's limitations on disclosure of information about ongoing negotiations will give board members the freedom to make day-to-day business decisions. The resolution also correctly guards the privacy interests of association employees.

However, the resolution should be amended by inserting the word "file" after the word "personnel" in subdivision (f)(2) at line 25.

### TEXT OF RESOLUTION

Resolved, that the Conference of Delegates recommends that legislation be sponsored to amend Civil Code section 1363 to read as follows:

- 1 §1363
- 2 (a) A common interest development shall be managed by an association which may be
- 3 incorporated or unincorporated. The association may be referred to as a community association.
- 4 (b) An association, whether incorporated or unincorporated, shall prepare a budget
- 5 pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.
- 6 (c) Unless the governing documents provide otherwise, and regardless of whether the
- 7 association is incorporated or unincorporated, the association may exercise the powers granted to
- 8 a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code,
- 9 except that an unincorporated association may not adopt or use a corporate seal or issue
- 10 membership certificates in accordance with Section 7313 of the Corporations Code. The
- 11 association, whether incorporated or unincorporated, may exercise the powers granted to an
- 12 association by Section 383 of the Code of Civil Procedure and the powers granted to the
- 13 association in this title.

14 (d) Meetings of the membership of the association shall be conducted in accordance with a  
15 recognized system of parliamentary procedure or any parliamentary procedures the association  
16 may adopt.

17 (e) Notwithstanding any other provision of law, notice of meetings of the members shall  
18 specify those matters the board intends to present for action by the members, but, except as  
19 otherwise provided by law, any proper matter may be presented at the meeting for action.

20 (f) Members, or their designated representatives, shall have the right to inspect and  
21 photocopy:

22 (1) the financial records of the association, and

23 (2) contracts, leases and agreements between the association and any party.

24 The board of directors may withhold information in the personnel of bona fide employees  
25 of the association, but salary, earnings, position description and contracted bonuses are to be  
26 disclosed. The board of directors may withhold from members specific offers, written contract  
27 negotiations, and negotiations or pending settlements of legal disputes. In addition, Mmembers of  
28 the association shall have access to association records in accordance with Article 3 (commencing  
29 with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code.

30 (g) If an association adopts or has adopted a policy imposing any monetary penalty,  
31 including any fee, on any association member for a violation of the governing documents or rules of  
32 the association, including any monetary penalty relating to the activities of a guest or invitee of a  
33 member, the board of directors shall adopt and distribute to each member, by personal delivery or  
34 first-class mail, a schedule of the monetary penalties that may be assessed for those violations,  
35 which shall be in accordance with authorization for member discipline contained in the governing  
36 documents. The board of directors shall not be required to distribute any additional schedules of  
37 monetary penalties unless there are changes from the schedule that was adopted and distributed to  
38 the members pursuant to this subdivision.

39 (h) When the board of directors is to meet to consider or impose discipline upon a  
40 member, the board shall notify the member in writing, by either personal delivery or first-class mail,  
41 at least 10 days prior to the meeting. The notification shall contain, at a minimum, the date, time,  
42 and place of the meeting, the nature of the alleged violation for which a member may be disciplined,  
43 and a statement that the member has a right to attend and may address the board at the meeting.  
44 The board of directors of the association shall meet in executive session if requested by the  
45 member being disciplined.

46 If the board imposes discipline on a member, the board shall provide the member a written  
47 notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days  
48 following the action. A disciplinary action shall not be effective against a member unless the board  
49 fulfills the requirements of this subdivision.

50 (i) Whenever two or more associations have consolidated any of their functions under a  
51 joint neighborhood association or similar organization, members of each participating association  
52 shall be entitled to attend all meetings of the joint association other than executive sessions, (1) shall  
53 be given reasonable opportunity for participation in those meetings and (2) shall be entitled to the  
54 same access to the joint association's records as they are to the participating association's records.

55 (j) Nothing in this section shall be construed to create, expand, or reduce the authority of

56 the board of directors of an association to impose monetary penalties on an association member for  
57 a violation of the governing documents or rules of the association.

(Proposed language underlined; language to be deleted stricken.)

PROPONENT: Orange County Bar Association

#### STATEMENT OF REASONS

Existing Law: Existing law allows members of home owner associations to have the same access to records as owners of stock in a corporation.

This Resolution: Amends the Civil Code to specifically allow members of home owner associations to have access to the financial records and contracts of the association.

The Problem: When home owner associations were created, the rules that governed them were relegated to traditional corporate law. Home ownership is different than investing in businesses. A person buying shares in a corporation is buying the expertise of that business' managers to run the company efficiently. When a people buy a unit in a common interest development they are buying location, proximity to schools, suitable living space and all this has absolutely no bearing on the management of the association, especially with a newly built property.

When a person doesn't like the management of the publicly traded security they own, they sell the stock on the open market. When the management changes on a common interest development it is not that easy to pick up and move. Also, the objectives of the competitive business are different than a home owner's association. A business needs its secrets. There are reasons one business does better than another. Businesses try to find out what their competitors are doing. To allow corporate shareholders complete access to the records of the corporation would allow a competitor to buy one share and be able to browse and learn that corporations strengths and weaknesses. There is no similar competition aspect to running a home owners association. There are gardening and management contracts. This is not rocket science nor the Manhattan Project.

The Board of Directors is only required to provide the members a budget. A \$10,000 gardening budget doesn't tell the member whether that includes new plant installations, tree trimming or other items necessary in order to see if the contract with the gardener is reasonable. A \$5000 income item from the service that runs the laundry room doesn't tell the members whether the company is providing 50% of gross laundry income or 5%. Only actually viewing the contracts involved will provide the information. And if the Board of Directors decide not to provide it, then the members are forced into an expensive suit or disruptive recall.

Home owner associations are more like non-profit charitable organizations and their tax returns are available to the public. The change needs to be implemented.

## IMPACT STATEMENT

This resolution would not affect any other statute, regulation or law.

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